

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

REGIS HIGGINS,

Plaintiff,

v.

C/O KESSELL, C/O GANGLOFF and
MARC HODGE,

Defendants.

Case No. 12-cv-632-JPG-PMF

MEMORANDUM AND ORDER

This matter comes before the Court on the Report and Recommendation (“Report”) (Doc. 31) of Magistrate Judge Philip M. Frazier recommending that the Court grant the motion to dismiss filed by defendants Andrew Gangloff, Marc Hodge and James Kessel (Doc. 20) on the grounds that plaintiff Regis Higgins failed to exhaust his administrative remedies before filing suit as required by 28 U.S.C. § 1997e(a).

The Court may accept, reject or modify, in whole or in part, the findings or recommendations of the magistrate judge in a report and recommendation. Fed. R. Civ. P. 72(b)(3). The Court must review *de novo* the portions of the report to which objections are made. *Id.* “If no objection or only partial objection is made, the district court judge reviews those unobjected portions for clear error.” *Johnson v. Zema Sys. Corp.*, 170 F.3d 734, 739 (7th Cir. 1999).

The Court has received no objection to the Report.¹ The Court has reviewed the entire file and finds that the Report is not clearly erroneous. Accordingly, the Court hereby:

¹On March 22, 2013, Higgins mailed a document captioned “Plaintiff’s Response to Defendant’s Reply to Plaintiff’s Opposition to Defendant’s Motion to Dismiss” (Doc. 32). The Clerk of Court docketed the document on March 27, 2013, the day after Magistrate Judge Frazier issued the Report. The Court declines to construe the filing as an objection because it was clearly prepared prior to the Report and is, in truth, a sur-reply brief, which the Court will not accept under any circumstances. *See* Local Rule 7.1(c).

- **ADOPTS** the Report in its entirety (Doc. 31);
- **GRANTS** the defendants' motion to dismiss (Doc. 20);
- **DISMISSES** this case in its entirety **without prejudice** because Higgins did not exhaust his administrative remedies before filing suit; and
- **DIRECTS** the Clerk of Court to enter judgment accordingly.

IT IS SO ORDERED.
DATED: May 10, 2013

s/ J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE